United Workers of America and Local 32B-32J, Service Employees International Union¹ and AM Property Holding Corp. and Media Technology Centers, LLC, a single employer, a joint employer with Planned Building Services, Inc. Case 2–CB-18037

September 13, 2007 DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND KIRSANOW

The General Counsel seeks a default judgment in this case on the ground that the Respondent, United Workers of America, has failed to file an answer to the complaint. For the reasons set forth below, we deny the General Counsel's motion in part, and grant it in part.

Based on a charge filed by Local 32B-32J, Service Employees International Union, on September 5, 2000, the General Counsel issued a consolidated complaint against the Respondent on March 30, 2001, alleging that it has violated Section 8(b)(1)(A) and (2) of the Act. Also on March 30, 2001, the General Counsel issued an order consolidating this case with Case 2–CA–33146. On May 21, 2001, the General Counsel issued an order further consolidating this case with Cases 2–CA–33308 and 2–CA–33558, and issued an amended consolidated complaint. The General Counsel issued another amended complaint on June 15, 2001. The Respondent failed to file an answer to any of the complaints. On November 21, 2001, the General Counsel severed Case 2–CB–18037 from those mentioned above.

The amended consolidated complaint alleges, among other things, that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by (1) accepting recognition from Planned Building Services, Inc. (PBS) and AM Property Holding Corporation (AM), as joint employers, at 80-90 Maiden Lane, New York City, New York, at a time when the Respondent did not represent an uncoerced majority of the bargaining unit; and (2) entering into and maintaining a collective-bargaining agreement, which included a union-security provision and dues checkoff provision, with PBS at 80-90 Maiden Lane. The complaint also alleges that the Respondent violated Section 8(b)(1)(A) by telling PBS' employees that they

were required to sign authorization cards, and by accepting PBS' assistance in recruiting members and in soliciting authorization from employees to deduct union dues from their paychecks.

On February 19, 2002, the General Counsel filed with the Board a Motion for Default Summary Judgment and a memorandum in support of its motion. On February 21, 2002, the Board issued an order transferring the proceeding to the Board, and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Additionally, all of the complaints affirmatively stated that unless an answer is filed within 14 days the allegations shall be deemed admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 17, 2001, advised the Respondent and its counsel that unless an answer was filed by May 1, 2001, a motion for summary judgment would be filed.²

In the absence of good cause being shown for the failure to file a timely answer, we grant that portion of the General Counsel's motion concerning the complaint allegations that the Respondent unlawfully accepted assistance from PBS, and that the Respondent unlawfully told PBS employees that they were required to sign authorization cards. For the reasons discussed below, however, we deny the General Counsel's motion concerning the complaint allegations that the Respondent unlawfully accepted recognition from PBS and entered into a collective-bargaining agreement with PBS at 80-90 Maiden Lane.

On the entire record, the Board makes the following

¹ We have amended the caption to reflect the disaffiliation of the Service Employees International Union from the AFL-CIO on July 25, 2005.

² Copies of each complaint and a copy of the April 17 letter were served on the Respondent by certified mail, but were returned to the Regional Office marked as "unclaimed." However, the Respondent's failure or refusal to accept certified mail should not serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210, 210 fn. 6 (1986), enfd. mem. 869 F.2d 1492 (6th Cir. 1980)

Copies of the amended complaints were sent to Respondent's counsel by regular mail. That the complaints were not returned to the Regional Office indicates that they were received. See, e.g., *J & W Drywall Co.*, 308 NLRB 517, 518 (1992), enfd. mem. 19 F.3d 1433 (6th Cir. 1994).

FINDINGS OF FACT I. JURISDICTION

At all material times, the Respondent, United Workers of America, has been a labor organization within the meaning of Section 2(5) of the Act.

Planned Building Services, Inc. (PBS) is a corporation with an office at 167 Fairfield Road, Fairfield, New Jersey, and is engaged in the business of providing cleaning and maintenance services at various commercial and residential buildings. Annually, PBS performs services valued in excess of \$50,000 directly for enterprises located within New York State, and purchases and receives goods valued in excess of \$5000 directly from suppliers located outside of New Jersey. Accordingly, we find that PBS is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

On about April 25, 2000, AM purchased an office building at 80-90 Maiden Lane, and contracted with PBS to provide nighttime building and cleaning services for the building.

Thereafter, PBS recognized the Respondent as the exclusive collective-bargaining representative of its employees at 80-90 Maiden Lane and entered into a collective-bargaining agreement with the Respondent containing a union-security clause³ and a dues-checkoff provision.⁴ During relevant times, PBS and the Respondent enforced the provisions of that agreement, and PBS deducted union dues from employees' paychecks and remitted those dues to the Respondent.

At all relevant times, Dennis Henry and Walter Nemecek⁵ were agents of PBS.⁶

About the second week of May 2000, Henry told PBS employees at 80-90 Maiden Lane that they were required to join the Respondent.

About the second week of May 2000, the Respondent's representatives told PBS employees at 80-90 Maiden Lane that they were required to sign authorization cards for the Respondent.

³ The union-security clause required PBS employees to become union members within 60 days of the effective date of the agreement. There has been no allegation that this provision was unlawful.

Around late August 2000, Nemecek distributed and solicited dues-checkoff authorizations from PBS employees.

About September or October 2000, Henry distributed dues-checkoff authorizations for the Respondent.

On August 30, 2007, the Board issued its decision in Case 2-CA-33146, which had been severed from this proceeding, as stated above.⁷ The Board majority in that case found that no joint-employer relationship existed between PBS and AM. The majority further found that the issue of whether PBS individually violated the Act by recognizing the Respondent as the bargaining representative of the employees at 80-90 Maiden Lane and by entering into a collective-bargaining agreement with the Respondent at that site was not properly before the Board. On that basis, the majority dismissed the latter allegation. However, the Board found, among other things, that PBS violated Section 8(a)(2) and (1) of the Act by soliciting authorization cards for the Respondent and by requiring employees to authorize the deduction of dues from their paychecks.8

B. Discussion

According to the undisputed allegations of the complaint, the Respondent accepted assistance from PBS' agents in soliciting authorization from employees to deduct union dues from their paychecks. In accepting this assistance, the Respondent violated Section 8(b)(1)(A) of the Act. See generally *Planned Building Services*, 347 NLRB 670, 705 (2006) (union violated Sec. 8(b)(1)(A) by accepting employer's unlawful assistance in obtaining employee dues).

It is also undisputed that, about the second week of May 2000, the Respondent's representatives told PBS employees that they were required to sign union authorization cards. Although the complaint does not specify the date on which the statements were made, the judge found in Case 2–CA–33146 that a unit majority of 11 employees signed authorization cards on May 9 and that 2 days later, on May 11, the Respondent requested recognition from PBS. Recognition was granted and the parties then entered into the collective-bargaining agreement containing the union-security provision. The re-

⁴ During the hearing in Case 2–CA–33146, the judge found that the Respondent requested recognition from PBS on May 11, 2000.

⁵ Nemecek is named in the complaint as "Walter (LNU)." During the hearing in Case 2–CA–33146, he was identified as Walter Nemecek, an AM employee.

⁶ Although both Henry and Nemecek were also alleged to have been agents of AM, we need only find here that they acted as agents of PBS while engaging in the activities described below.

⁷ AM Property Holding Corp., 350 NLRB 998 (2007).

⁸ The Board also found that PBS violated Sec. 8(a)(2) and (1) by deducting union dues from employee paychecks without authorization, and by continuing to deduct union dues after the Respondent had disclaimed interest in representing employees. The General Counsel has not alleged that the Respondent violated the Act by accepting assistance from PBS in either instance.

⁹ We find it unnecessary to pass on whether the Respondent's acceptance of further assistance by PBS in recruiting members violated Sec. 8(b)(1)(A), as such a finding would not materially affect the remedy.

^{10 350} NLRB 998, 1025.

cord further established that at least some of these employees signed the cards after having spoken with the Respondent's representatives. Based on this record, and the Respondent's failure to deny that it acted unlawfully by telling employees they were required to sign the cards, we conclude that the statements were not made pursuant to a lawful union-security provision. Thus, by engaging in such behavior, the Respondent violated Section 8(b)(1)(A). See, e.g., *Freeman Decorating Co.*, 335 NLRB 103, 131 (2001).

Based on our prior dismissal of the allegation that PBS' recognition of the Respondent at 80-90 Maiden Lane violated the Act (see 350 NLRB 998, 1005), we shall dismiss that portion of the complaint alleging that the Respondent violated Section 8(b)(1)(A) and (2) by accepting recognition from PBS and maintaining a collective-bargaining agreement with PBS at 80-90 Maiden Lane. 11

CONCLUSIONS OF LAW

- 1. By accepting assistance from PBS in soliciting authorization from employees to deduct union dues from their paychecks, and by telling PBS employees they were required to sign authorization cards, the Respondent has violated Section 8(b)(1)(A) of the Act.
- 2. The Respondent did not violate Section 8(b)(1)(A) and (2) by accepting recognition from PBS and maintaining a collective-bargaining agreement with PBS at 80-90 Maiden Lane.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The Respondent, United Workers of America, its officers, agents, and representatives, shall

- 1. Cease and desist from
- (a) Telling employees that they are required to sign union authorization cards.
- (b) Accepting assistance and support from Planned Building Services, Inc. in obtaining employee authorization to deduct union dues from their paychecks.
- (c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LABOR LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT tell employees that they are required to sign union authorization cards.

WE WILL NOT accept assistance and support from Planned Building Services, Inc. in soliciting employee authorization to deduct union dues from their paychecks.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

UNITED WORKERS OF AMERICA

¹¹ Member Liebman found that PBS' recognition of the Respondent at 80-90 Maiden Lane violated the Act. Therefore, she would find that the Respondent violated Sec. 8(b)(2) and (1)(A) by accepting recognition from PBS and maintaining the collective-bargaining agreement. See 350 NLRB 998, 1013.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."